IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

Misc. No. 74-6521

MONICA ALDINGER, Petitioner,

v.

MERTON HOWARD, individually and in his capacity as Treasurer of Spokane County, and

SPOKANE COUNTY, a public corporation, Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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I. RESPONDENT IS RAISING THE ISSUE OF THE MERITS OF THE CLAIM AND MOOTNESS FOR THE FIRST TIME ON APPEAL.

Respondent, in his response to the Petition for Writ of Certiorari, raises the merits, or alleged lack of merits, of our state claim against the respondent as his basis for urging this court to deny Certiorari, thus, raising this issue for the first time on this appeal; the issue of the merits of the claim was not raised in the District Court below. Further, he is asking this court to do what the District Court felt it without the power to do.

The sole purpose of the Petition for Certiorari is to determine whether the District Court for the Eastern District of Washington has the power to consider the merits of petitioner's state claims. All petitioner seeks to do is to present the merits of her state claims to the District Court, and she is ready, willing and able to do so. The District Court, however, has ruled that it is without power to entertain these claims.

This Petition for Certiorari is timely and in fact, necessary because at this time only the Ninth Circuit does not allow the District Courts within its jurisdiction the power to assume pendent jurisdiction over state claims against non-federal parties. The District Courts in every other Circuit do have this power.

II. THE ISSUE BEFORE THIS COURT IS NOT MOOT.

The sole issue before this court is a question of judicial power: whether the District Courts in the Ninth Circuit have less power to entertain claims than do District Courts in all of the other circuits. It is this question

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only that was raised on appeal to the court below and that this court is being requested to answer by the instant petition.

The merits of the pendent state claim involved is not before this court nor could it be, for the District Court did not consider it; the court simply held that it was prohibited from entertaining it.

The petitioner is ready to go into the District Court and argue the merits of her state claims, including the mootness question. It is her position that the merits of the claim, including the mootness allegation, are not as clear cut as respondent suggests and will require extensive briefing and argument, and include such questions as:

1. Do the facts constitute compliance with the claims statute? A question of substantial compliance.
2. Do the facts constitute estoppel?
3. Must this defense be affirmatively raised in the answer; a question of waiver.

The merits are not at issue before this court; and should certainly not be considered solely upon respondent's partisan view of them. Unless this court requires the Ninth Circuit to adopt the view of every other circuit that has considered this matter, the petitioner will lose the opportunity to present her cause of action solely because the venue of her case falls within the Ninth Circuit.

Respectfully Submitted,

Norman Rosenberg

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